

AMENDED IN SENATE APRIL 15, 2004

SENATE BILL

No. 1330

Introduced by Senator Murray

February 18, 2004

~~An act to amend Sections 629.51, 629.88, 632.5, 632.6, and 632.7 of, and to add Section 629.905 to, An act to amend Sections 632.5, 632.6, and 632.7 of the Penal Code, relating to invasions of privacy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Murray. Privacy: embedded automotive telematic devices.

~~Existing law allows specified law enforcement officials to apply for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication, as specified. Existing law requires that an order authorizing this type of interception direct, upon request of the applicant, that various persons or entities furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services provided to the person whose communications are to be intercepted.~~

~~This bill would require that an order authorizing the interception of a communication between an embedded automotive telematic device, as defined, and a central service center or any other person that provides communication services by means of the embedded automotive device, provide the direction described above, upon request of the applicant, to the central service center or other person providing the services.~~

~~Existing law prohibits a person, maliciously and without the consent of all parties to the communication, from intercepting or receiving a communication transmitted between specified communication devices,~~

or from assisting in these acts. Existing law prohibits a person, without consent, from intercepting, receiving, and intentionally recording a communication transmitted between these communication devices, or from assisting in these acts.

This bill would add embedded automotive telematic devices, *as defined*, to the communication devices covered by these prohibitions. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 629.51 of the Penal Code is amended to~~
2 ~~read:~~
3 ~~629.51.—For the purposes of this chapter, the following terms~~
4 ~~have the following meanings:~~
5 ~~(a) “Wire communication” means any aural transfer made in~~
6 ~~whole or in part through the use of facilities for the transmission~~
7 ~~of communications by the aid of wire, cable, or other like~~
8 ~~connection between the point of origin and the point of reception~~
9 ~~(including the use of a like connection in a switching station);~~
10 ~~furnished or operated by any person engaged in providing or~~
11 ~~operating these facilities for the transmission of communications;~~
12 ~~and the term includes any electronic storage of these~~
13 ~~communications.~~
14 ~~(b) “Electronic pager communication” means any tone or~~
15 ~~digital display or tone and voice pager communication.~~
16 ~~(c) “Electronic cellular telephone communication” means any~~
17 ~~cellular or cordless radio telephone communication.~~
18 ~~(d) “Embedded automotive telematic device communication”~~
19 ~~means any communication involving an embedded automotive~~
20 ~~telematic device, as defined in Section 629.905.~~

1 ~~(c) “Aural transfer” means a transfer containing the human~~
2 ~~voice at any point between and including the point of origin and~~
3 ~~the point of reception.~~

4 ~~SEC. 2. Section 629.88 of the Penal Code is amended to read:~~

5 ~~629.88. Nothing in Section 631, 632.5, 632.6, or 632.7 shall~~
6 ~~be construed as prohibiting any peace officer or federal law~~
7 ~~enforcement officer from intercepting any wire, electronic pager,~~
8 ~~electronic cellular telephone, or embedded automotive telematic~~
9 ~~device communication pursuant to an order issued in accordance~~
10 ~~with the provisions of this chapter. Nothing in Section 631, 632.5,~~
11 ~~632.6, or 632.7 shall be construed as rendering inadmissible in any~~
12 ~~criminal proceeding in any court or before any grand jury any~~
13 ~~evidence obtained by means of an order issued in accordance with~~
14 ~~the provisions of this chapter. Nothing in Section 637 shall be~~
15 ~~construed as prohibiting the disclosure of the contents of any wire,~~
16 ~~electronic pager, electronic cellular telephone, or embedded~~
17 ~~automotive telematic device communication obtained by any~~
18 ~~means authorized by this chapter, if the disclosure is authorized by~~
19 ~~this chapter. Nothing in this chapter shall apply to any conduct~~
20 ~~authorized by Section 633.~~

21 ~~SEC. 3. Section 629.905 is added to the Penal Code, to read:~~

22 ~~629.905. (a) An order authorizing the interception of a~~
23 ~~communication between an embedded automotive telematic~~
24 ~~device and a central service center or any other person that~~
25 ~~provides communication services by means of the embedded~~
26 ~~automotive device shall direct, upon request of the applicant, that~~
27 ~~the central service center or other person providing the services~~
28 ~~furnish the applicant forthwith all information, facilities, and~~
29 ~~technical assistance necessary to accomplish the interception~~
30 ~~unobtrusively and with a minimum of interference with the~~
31 ~~services that the central service center or other person is providing~~
32 ~~the person whose communications are to be intercepted. Any~~
33 ~~central service center or other person furnishing facilities or~~
34 ~~technical assistance shall be fully compensated by the applicant for~~
35 ~~the reasonable costs of furnishing the facilities and technical~~
36 ~~assistance.~~

37 ~~(b) As used in this section, “embedded automotive telematic~~
38 ~~device” means any system or device that is integrated into a~~
39 ~~vehicle and combines wireless voice and data communication~~
40 ~~systems in order to aurally provide a vehicle occupant with~~

~~information and services from a central service center, and to provide the central service center with information regarding the vehicle, including automatic airbag deployment notification, vehicle tracking, personalized information, real time traffic data, roadside assistance, and entertainment.~~

~~(c) It is the intent of the Legislature that subdivision (a) be interpreted in a manner consistent with the interpretation of 18 U.S.C. 2518(4), as set forth in *The Company v. U.S.* (2003) 349 F.3d 1132.~~

SEC. 4.

SECTION 1. Section 632.5 of the Penal Code is amended to read:

632.5. (a) Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving a communication transmitted between cellular radio telephones, between any cellular radio telephone and a landline telephone, or between any cellular radio telephone and an embedded automotive telematic device, ~~as defined in subdivision (b) of Section 629.905,~~ shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment. If the person has been previously convicted of a violation of this section or Section 631, 632, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.

(b) In the following instances, this section shall not apply:

(1) To any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) To the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) To any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section and Section 635, “cellular radio telephone” means a wireless telephone authorized by the Federal

1 Communications Commission to operate in the frequency
2 bandwidth reserved for cellular radio telephones.

3 ~~SEC. 5.~~

4 (d) *As used in this section, “embedded automotive telematic*
5 *device” means any system or device that is integrated into a*
6 *vehicle and combines wireless voice and data communication*
7 *systems in order to aurally provide a vehicle occupant with*
8 *information and services from a central service center, and to*
9 *provide the central service center with information regarding the*
10 *vehicle, including automatic airbag deployment notification,*
11 *vehicle tracking, personalized information, real-time traffic data,*
12 *roadside assistance, and entertainment.*

13 SEC. 2. Section 632.6 of the Penal Code is amended to read:

14 632.6. (a) Every person who, maliciously and without the
15 consent of all parties to the communication, intercepts, receives,
16 or assists in intercepting or receiving a communication transmitted
17 between cordless telephones as defined in subdivision (c),
18 between any cordless telephone and a landline telephone, between
19 a cordless telephone and a cellular telephone, or between a
20 cordless telephone and an embedded automotive telematic device,
21 ~~as defined in subdivision (b) of Section 629.905,~~ shall be punished
22 by a fine not exceeding two thousand five hundred dollars
23 (\$2,500), by imprisonment in the county jail not exceeding one
24 year, or in the state prison, or by both that fine and imprisonment.
25 If the person has been convicted previously of a violation of
26 Section 631, 632, 632.5, 632.7, or 636, the person shall be
27 punished by a fine not exceeding ten thousand dollars (\$10,000),
28 or by imprisonment in the county jail not exceeding one year, or
29 in the state prison, or by both that fine and imprisonment.

30 (b) This section shall not apply in any of the following
31 instances:

32 (1) To any public utility engaged in the business of providing
33 communications services and facilities, or to the officers,
34 employees, or agents thereof, where the acts otherwise prohibited
35 are for the purpose of construction, maintenance, conduct, or
36 operation of the services and facilities of the public utility.

37 (2) To the use of any instrument, equipment, facility, or service
38 furnished and used pursuant to the tariffs of the public utility.

(3) To any telephonic communications system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section and in Section 635, “cordless telephone” means a two-way low power communication system consisting of two parts—a “base” unit which connects to the public switched telephone network and a handset or “remote” unit—which are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

~~SEC. 6.~~

(d) As used in this section, “embedded automotive telematic device” has the meaning set forth in subdivision (d) of Section 632.5.

SEC. 3. Section 632.7 of the Penal Code is amended to read:

632.7. (a) Every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, a cordless telephone and a cellular radio telephone, or an embedded automotive telematic device and a cellular radio telephone, landline telephone, or cordless telephone, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of this section or of Section 631, 632, 632.5, 632.6, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) Any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section, the following terms have the following meanings:

(1) “Cellular radio telephone” means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

(2) “Cordless telephone” means a two-way, low power communication system consisting of two parts, a “base” unit which connects to the public switched telephone network and a handset or “remote” unit, that are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

(3) “Embedded automotive telematic device” has the meaning set forth in subdivision (b) of Section 629.905 (d) of Section 632.5.

(4) “Communication” includes, but is not limited to, communications transmitted by voice, data, or image, including facsimile.

~~SEC. 7.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.